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To amend title 38, United States Code, to provide benefits for certain children of Vietnam veterans who are born with spina bifida, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 1996

Mr. DASCHLE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Mr. WELLSTONE, Ms. MIKULSKI, Mr. BYRD, Mr. DODD, Mr. CONRAD, Mr. INOUE, Mr. PELL, Mr. SIMON, Mr. FEINGOLD, Mr. BREAUX, Mrs. BOXER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. ROBB, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide benefits for certain children of Vietnam veterans who are born with spina bifida, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REFERENCES TO TITLE 38, UNITED STATES**
4 **CODE.**

5 Except as otherwise expressly provided, whenever in
6 this Act an amendment or repeal is expressed in terms
7 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of title 38, United States Code.

3 **SEC. 2. BENEFITS FOR THE CHILDREN OF VIETNAM VETER-**
4 **ANS WHO ARE BORN WITH SPINA BIFIDA.**

5 (a) SHORT TITLE.—This section may be cited as the
6 “Agent Orange Benefits Act of 1996”.

7 (b) ESTABLISHMENT OF NEW CHAPTER 18.—Part II
8 is amended by inserting after chapter 17 the following new
9 chapter:

10 **“CHAPTER 18—BENEFITS FOR THE CHILDREN OF**
11 **VIETNAM VETERANS WHO ARE BORN WITH**
12 **SPINA BIFIDA.**

“Sec.

“1801. Purpose.

“1802. Definitions

“1803. Health care.

“1804. Vocational training.

“1805. Monetary allowance.

“1806. Effective date of awards.

13 **“§ 1801. Purpose**

14 “The purpose of this chapter is to provide for the
15 special needs of certain children of Vietnam veterans who
16 were born with the birth defect spina bifida, possibly as
17 the result of the exposure of one or both parents to herbi-
18 cides during active service in the Republic of Vietnam dur-
19 ing the Vietnam era, through the provision of health care,
20 vocational training, and monetary benefits.

21 **“§ 1802. Definitions**

22 “For the purposes of this chapter—

1 “(1) the term ‘child’ means a natural child of
2 a Vietnam veteran, regardless of age or marital sta-
3 tus, who was conceived after the date on which the
4 veteran first entered the Republic of Vietnam during
5 the Vietnam era;

6 “(2) the term ‘Vietnam veteran’ means a vet-
7 eran who, during active military, naval, or air serv-
8 ice, served in the Republic of Vietnam during the
9 Vietnam era; and

10 “(3) the term ‘spina bifida’ means all forms of
11 spina bifida other than spina bifida occulta.

12 **“§ 1803. Health care**

13 “(a) In accordance with regulations the Secretary
14 shall prescribe, the Secretary shall provide such health
15 care under this chapter as the Secretary determines is
16 needed to a child of a Vietnam veteran who is suffering
17 from spina bifida, for any disability associated with such
18 condition.

19 “(b) The Secretary may provide health care under
20 this section directly or by contract or other arrangement
21 with a health care provider.

22 “(c) For the purposes of this section—

23 “(1) the term ‘health care’ means home care,
24 hospital care, nursing home care, outpatient care,
25 preventive care, habilitative and rehabilitative care,

1 case management, and respite care, and includes the
2 training of appropriate members of a child's family
3 or household in the care of the child and provision
4 of such pharmaceuticals, supplies, equipment, de-
5 vices, appliances, assistive technology, direct trans-
6 portation costs to and from approved sources of
7 health care authorized under this section, and other
8 materials as the Secretary determines to be nec-
9 essary;

10 “(2) the term ‘health care provider’ includes,
11 but is not limited to, specialized spina bifida clinics,
12 healthcare plans, insurers, organizations, institu-
13 tions, or any other entity or individual who furnishes
14 health care services that the Secretary determines
15 are covered under this section;

16 “(3) the term ‘home care’ means outpatient
17 care, habilitative and rehabilitative care, preventive
18 health services, and health-related services furnished
19 to an individual in the individual's home or other
20 place of residence.

21 “(4) the term ‘hospital care’ means care and
22 treatment for a disability furnished to an individual
23 who has been admitted to a hospital as a patient;

24 “(5) the term ‘nursing home care’ means care
25 and treatment for a disability furnished to an indi-

1 vidual who has been admitted to a nursing home as
2 a resident;

3 “(6) the term ‘outpatient care’ means care and
4 treatment of a disability, and preventive health serv-
5 ices, furnished to an individual other than hospital
6 care or nursing home care;

7 “(7) the term ‘preventive care’ means care and
8 treatment furnished to prevent disability or illness,
9 including periodic examinations, immunizations, pa-
10 tient health education, and such other services as
11 the Secretary determines are necessary to provide ef-
12 fective and economical preventive health care;

13 “(8) the term ‘habilitative and rehabilitative
14 care’ means such professional, counseling, and guid-
15 ance services and treatment programs (other than
16 vocational training under section 1804 of this title)
17 as are necessary to develop, maintain, or restore, to
18 the maximum extent, the functioning of a disabled
19 person; and

20 “(9) the term ‘respite care’ means care fur-
21 nished on an intermittent basis in a Department fa-
22 cility for a limited period to an individual who re-
23 sides primarily in a private residence when such care
24 will help the individual to continue residing in such
25 private residence.

1 **“§ 1804. Vocational training**

2 “(a) Pursuant to such regulations as the Secretary
3 may prescribe, the Secretary may provide vocational train-
4 ing under this section to a child of a Vietnam veteran who
5 is suffering from spina bifida if the Secretary determines
6 that the achievement of a vocational goal by such child
7 is reasonably feasible.

8 “(b)(1) If a child elects to pursue a program of voca-
9 tional training under this section, the program shall be
10 designed in consultation with the child in order to meet
11 the child’s individual needs and shall be set forth in an
12 individualized written plan of vocational rehabilitation.

13 “(2)(A) Subject to subparagraph (B) of this para-
14 graph, a vocational training program under this sub-
15 section shall consist of such vocationally oriented services
16 and assistance, including such placement and post-place-
17 ment services and personal and work adjustment training,
18 as the Secretary determines are necessary to enable the
19 child to prepare for and participate in vocational training
20 or employment.

21 “(B) A vocational training program under this sub-
22 section—

23 “(i) may not exceed 24 months unless, based on
24 a determination by the Secretary that an extension
25 is necessary in order for the child to achieve a voca-
26 tional goal identified (before the end of the first 24

1 months of such program) in the written plan formu-
2 lated for the child, the Secretary grants an extension
3 for a period not to exceed 24 months;

4 “(ii) may not include the provision of any loan
5 or subsistence allowance or any automobile adaptive
6 equipment; and

7 “(iii) may include a program of education at an
8 institution of higher learning only in a case in which
9 the Secretary determines that the program involved
10 is predominantly vocational in content.

11 “(c)(1) A child who is pursuing a program of voca-
12 tional training under this section who is also eligible for
13 assistance under a program under chapter 35 of this title
14 may not receive assistance under both of such programs
15 concurrently but shall elect (in such form and manner as
16 the Secretary may prescribe) under which program to re-
17 ceive assistance.

18 “(2) The aggregate period for which a child may re-
19 ceive assistance under this section and chapter 35 of this
20 title may not exceed 48 months (or the part-time equiva-
21 lent thereof).

22 **“§ 1805. Monetary allowance**

23 “(a) The Secretary shall pay a monthly allowance
24 under this chapter to any child of a Vietnam veteran for

1 disability resulting from spina bifida suffered by such
2 child.

3 “(b) The amount of the allowance paid under this
4 section shall be based on the degree of disability suffered
5 by a child as determined in accordance with such schedule
6 for rating disabilities resulting from spina bifida as the
7 Secretary may prescribe. The Secretary shall, in prescrib-
8 ing the rating schedule for the purposes of this section,
9 establish three levels of disability upon which the amount
10 of the allowance provided by this section shall be based.
11 The allowance shall be \$200 per month for the lowest level
12 of disability prescribed, \$700 per month for the intermedi-
13 ate level of disability prescribed, and \$1,200 per month
14 for the highest level of disability prescribed.

15 “(c)(1) Whenever there is an increase in benefit
16 amounts payable under title II of the Social Security Act
17 (42 U.S.C. 401 et seq.) as a result of a determination
18 under section 215(i) of such Act (42 U.S.C. 415(i)), the
19 Secretary shall, effective on the date of such increase in
20 benefit amounts, increase each rate of allowance under
21 this section, as such rates were in effect immediately prior
22 to the date of such increase in benefits payable under title
23 II of the Social Security Act, by the same percentage as
24 the percentage by which such benefit amounts are in-
25 creased.

1 “(2) Whenever there is an increase in the rates of
2 the allowance payable under this section, the Secretary
3 shall publish such rates in the Federal Register.

4 “(3) Whenever such rates are so increased, the Sec-
5 retary may round such rates in such manner as the Sec-
6 retary considers equitable and appropriate for ease of ad-
7 ministration.

8 “(d) Notwithstanding any other provision of law, re-
9 ceipt by a child of an allowance under this section shall
10 not impair, infringe, or otherwise affect the right of such
11 child to receive any other benefit to which the child may
12 otherwise be entitled under any law administered by the
13 Secretary, nor shall such receipt impair, infringe, or other-
14 wise affect the right of any individual to receive any bene-
15 fit to which he or she is entitled under any law adminis-
16 tered by the Secretary that is based on the child’s relation-
17 ship to such individual.

18 “(e) Notwithstanding any other provision of law, the
19 allowance paid to a child under this section shall not be
20 considered income or resources in determining eligibility
21 for or the amount of benefits under any Federal or feder-
22 ally assisted program.

23 **“§ 1806. Effective date of awards**

24 “Effective date for an award for benefits under this
25 chapter shall be fixed in accordance with the facts found,

1 but shall not be earlier than the date of receipt of applica-
2 tion therefor.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall become effective on October 1, 1996.

5 (d) CLERICAL AMENDMENT.—The tables of chapters
6 before part I and at the beginning of part II are each
7 amended by inserting after the item referring to chapter
8 17 the following new item:

“18. Benefits for children of Vietnam veterans who are born with spina
bifida 1801”.

9 **SEC. 3. CLARIFICATION OF ENTITLEMENT FOR BENEFITS**
10 **FOR DISABILITY RESULTING FROM TREAT-**
11 **MENT OR VOCATIONAL SERVICES PROVIDED**
12 **BY DEPARTMENT OF VETERANS AFFAIRS.**

13 (a) Section 1151 is amended—

14 (1) by striking out the first sentence and insert-
15 ing in lieu thereof the following:

16 “(a) Compensation under this chapter and depend-
17 ency and indemnity compensation under chapter 13 of this
18 title shall be awarded for qualifying additional disability
19 to or death of a veteran in the same manner as if such
20 additional disability or death were service-connected. For
21 purposes of this section, additional disability or death is
22 qualifying only if it was not the result of the veteran’s
23 willful misconduct and—

1 “(1) it was caused by hospital care, medical or
2 surgical treatment, or examination furnished the vet-
3 eran under any law administered by the Secretary,
4 either by a Department employee or in a Depart-
5 ment facility as defined in section 1701(3)(A) of this
6 title, where the additional disability or death proxi-
7 mately resulted—

8 “(A) from carelessness, negligence, lack of
9 proper skill, error in judgment, or similar in-
10 stance of fault on the part of the Department
11 in furnishing the hospital care, medical or sur-
12 gical treatment, or examination; or

13 “(B) from an event not reasonably foresee-
14 able; or

15 “(2) it was incurred as a proximate result of
16 the provision of training and rehabilitation services
17 by the Secretary (including by a service-provider
18 used by the Secretary for such purpose under sec-
19 tion 3115 of this title) as part of an approved reha-
20 bilitation program under chapter 31 of this title.”;
21 and

22 (2) in the second sentence—

23 (A) by redesignating that sentence as sub-
24 section (b);

1 (B) by striking out “, aggravation,” both
2 places it appears; and

3 (C) by striking out “sentence” and sub-
4 stituting in lieu thereof “subsection”.

5 (b) The amendments made by subsection (a) shall
6 govern all administrative and judicial determinations of
7 eligibility for benefits under section 1151 of title 38, Unit-
8 ed States Code, made with respect to claims filed on or
9 after the date of enactment of this Act, including those
10 based on original applications and applications seeking to
11 reopen, revise, reconsider, or otherwise readjudicate on
12 any basis claims for benefits under section 1151 of that
13 title or predecessor provisions of law.

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